

1
2
3
4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 ***

7 EDGAR MARTINEZ-CARRANZA,

8 Plaintiff,

2:20-cv-01930-VCF

9 vs.

10 **ORDER**

11 PLUMBERS AND PIPEFITTERS UNION
LOCAL NO. 525 TRUST FUNDS, *et al.*,

MOTION TO DISMISS COMPLAINT [ECF No. 10]

12 Defendants.

13 Before the Court is defendant the Plumbers and Pipefitters Union Local 525 Pension Plan's
14 ("Pension") motion to dismiss. (ECF No. 10). The Court grants the motion in part: the Court dismisses
15 plaintiff's complaint without prejudice and gives plaintiff leave to amend.

16 **I. Background**

17 Plaintiff Edgar Martinez-Carranza alleges that he is a member of the Plumbers and Pipefitters
18 Local Union 525. (ECF No. 1). Plaintiff alleges that he suffered an on-the-job injury and sought
19 disability retirement benefits from Local 525. (*Id.*) Plaintiff alleges that (1) on June 20, 2019 the
20 defendants denied his claim, (2) on March 23, 2020 the defendants denied his appeal as untimely, and
21 (3) on July 20, 2020 the defendants accepted the claim and then denied it again on the same basis as the
22 June 20, 2019 denial. (*Id.*) Plaintiff brings claims against the defendants for (1) specific performance; (2)
23 violation of the Employee Retirement Income Security Act of 1974 ("ERISA") § 502, 29 U.S.C.A. §
24 1132(a)(1)(B); and (3) breach of fiduciary duty.

1 Defendant argues in its motion to dismiss that Martinez-Carranza has not alleged facts that show
 2 that he is plausibly entitled to relief per ERISA. (ECF No. 10 at 3). Defendant also argues that Martinez-
 3 Carranza cannot bring a specific performance claim against the Pension because specific performance is
 4 not a claim for relief as it is a remedy that cannot be independently pleaded. (*Id.*) Defendant also argues
 5 plaintiff's breach of fiduciary duty claim is contradicted in his complaint because he alleges that
 6 defendant considered his appeal and denied it July 2020. (*Id.*) Defendant also argues that plaintiff's
 7 allegation regarding the appeal is not true: it attaches exhibits to the motion and invites the Court to
 8 convert this motion to a motion for summary judgment for the purposes of dismissing the breach of
 9 fiduciary duty claim. (*Id.* at 1).

10 Plaintiff argues in his response that he has alleged sufficient bad facts regarding ERISA, that he
 11 alleged that defendant falsely stated that his claim was late, and he alleges that specific performance is a
 12 valid claim. (ECF No. 22 at 5). Plaintiff also alleges additional facts in his response that are not in the
 13 complaint and states that he intends to file an amended complaint. (*Id.* at 3).

14 Defendant argues in its reply that plaintiff has not alleged facts to show what actions Pension
 15 engaged in that led to the alleged wrongful denial of benefits. (ECF No. 23 at 3). Pension alleges that
 16 plaintiff does not address the contradictions in his complaint because it claims that the Pension never
 17 considered his appeal, but also admits that the Pension considered it. (*Id.*) Defendant also reiterates that
 18 specific performance is not a claim. (*Id.*)

19 **II. Discussion**

20 To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain "a short and plain
 21 statement of the claim showing the pleader is entitled to relief" so the defendant is given fair notice of
 22 the claim and the grounds upon which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
 23 (quoting Rule 8(a)(2)). A court may dismiss a complaint for failure to state a claim under Rule 12(b)(6)
 24 for two reasons: (1) lack of a cognizable legal theory, or (2) insufficient facts alleged under a cognizable
 25

1 legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). When deciding a
 2 motion to dismiss, all allegations of material fact in the complaint are taken as true and construed in the
 3 light most favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009).

4 **A. Specific Performance**

5 Specific performance is a remedy, not a claim. See Black's Law Dictionary (Bryan A. Garner,
 6 ed., 8th ed. 2004) at 1435 ("Specific performance: [A] court-ordered *remedy* that requires precise
 7 fulfillment of a legal or contractual obligation when monetary damages are inappropriate or inadequate
 8 ... an equitable *remedy* that lies within the court's discretion to award whenever the common-law remedy
 9 is insufficient, either because damages would be inadequate or because the damages could not possibly
 10 be established.") (emphasis added); see also *Harara v. ConocoPhillips Co.*, 377 F. Supp. 2d 779, 796
 11 n.20 (N.D. Cal. 2005) ("Specific performance is a form of contractual relief, not an independent claim.")

12 Plaintiff has not stated a plausible claim for specific performance because specific performance
 13 is not an independent claim: for example, specific performance can be a form of relief in a complaint
 14 that states a breach of contract claim. The Court dismisses plaintiff's specific performance claim with
 15 leave to amend.

16 **B. ERISA**

17 Per ERISA, "a participant or beneficiary" can bring a civil action "to recover benefits due to him
 18 under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to
 19 future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). ERISA § 502(a)(1)(B) claims
 20 have three general requirements: (1) the plaintiff exhausted the plan's administrative appeals process;
 21 (2) the plaintiff is entitled to a particular benefit under the plan's terms; and (3) the plaintiff was denied
 22 that benefit. See *Id.*; see also *Amato v. Bernard*, 618 F.2d 559 (9th Cir. 1980).

23 The plaintiff's allegations regarding the plan's administrative appeals process are vague: he
 24 alleges that the defendant denied his appeal as untimely, but it also appears that he alleges that the
 25

1 defendant denied it on the merits. (ECF No. 1 at 4). The plaintiff also not allege what particular benefit
2 is due to him under the plan's terms. Plaintiff does not plausibly allege that defendants violated any rules
3 or terms of the plan or allege any facts regarding the terms of the plan when Pension denied his claim.
4 The Court finds that dismissal without prejudice pursuant to Rule 12(b)(6) is warranted. If plaintiff files
5 an amended complaint, he must include clear factual allegations regarding the administrative appeals
6 process, the benefits to which he is entitled per the plan terms and specify how the defendant's wrongful
7 conduct denied (or will deny) him these benefits.

8 **C. Fiduciary Duty**

9 To establish a claim for breach of fiduciary duty under ERISA, a plaintiff must show that (1) the
10 defendant is a plan fiduciary; (2) the defendant breached its fiduciary duties; and (3) a cognizable loss to
11 the participants of the plan resulted. See 29 U.S.C. § 1132(a)(2); see also *Mathews v. Chevron Corp.*,
12 362 F.3d 1172, 1178 (9th Cir. 2004). ERISA Section 502 authorizes plan participants and beneficiaries,
13 and other specified parties to bring claims to enforce ERISA's substantive requirements and remedy
14 violations of benefit plan terms. 29 U.S.C. § 1132. "If, on a motion under Rule 12(b)(6) or 12(c), matters
15 outside the pleadings are presented to and not excluded by the court, the motion must be treated as one
16 for summary judgment under Rule 56." Fed. R. Civ. P. 12(d).

17 The Court excludes the defendant's attachments and does not consider the plaintiff's statements
18 regarding facts that are not in the complaint. Plaintiff provides no facts in the complaint to demonstrate
19 that defendant is the plan fiduciary, that it breached its fiduciary duty, or that he suffered a cognizable
20 loss as a result. Plaintiff generally alleges that the defendant denied his appeal as untimely but does not
21 provide factual allegations that demonstrate the elements of a claim for breach of fiduciary duty.
22 Without these specific factual allegations, plaintiff's complaint falls short of a sufficiently stated claim.
23 The Court dismisses this claim for failure to state a claim per Rule 12(b)(6).

24 //

1 Accordingly,

2 IT IS ORDERED that the defendants' motion to dismiss is GRANTED: the plaintiff's complaint
3 (ECF No. 1) is dismissed without prejudice with leave to amend. Plaintiff has until Monday, April 26,
4 2021 to file an amended complaint.

5 DATED this 29th day of March 2021.

6 

7 CAM FERENBACH
8 UNITED STATES MAGISTRATE JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25